

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1156 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANHAILAL GORDHANDAS MOGARIYA

Versus

MALI BHULABHAI RAMABHAI

Appearance: MR RN SHAH for Petitioner

MR KV SHELAT for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/06/2000

ORAL JUDGEMENT

The present petition has been preferred by the original plaintiff of Regular Civil Suit No.85 of 1988. The aforesaid suit was filed by the plaintiff in the Court of Civil Judge (J.D.), Godhra for permanent injunction, restraining the defendants from putting up any construction on the disputed premises, which is in possession of the defendants as tenants. It was the case of the plaintiff that the defendants have no right to make any construction in the aforesaid rented premises. Along with the suit, prayer for interim injunction was made and the trial court granted interim injunction in favour of the plaintiff. Thereafter, the present petitioner filed another suit, being Regular Civil Suit No.39 of 1993, for getting the possession of the suit premises from the defendants-tenants, by invoking the provisions of the Bombay Rent Act. It seems that the eviction decree is sought for in the said suit on the ground of changing the status quo by making material

alterations in the suit property as well as on the ground of breach of terms of tenancy. The aforesaid suit is pending before the learned trial Judge.

On behalf of the present respondents, i.e. original defendants of the aforesaid suit, being Regular Civil Suit No.85 of 1988, an application was given at Exhibit 75, alleging that the aforesaid civil suit No.85 of 1988 is for permanent injunction and subsequently, other suit is filed for possession on the ground of committing breach of the provisions of the Rent Act as well as on the ground of permanent alterations and that since substantive suit has been filed for getting possession, on the so-called alterations made by the defendants, according to the defendant, Regular Civil Suit No.85 of 1988 was required to be disposed of as per the provisions of the Specific Relief Act as there was already efficacious remedy available to the plaintiff and on that ground, the Regular Civil Suit No.85 of 1988 is required to be dismissed.

On behalf of the present petitioner, objection was taken to that application. It was stated that so far as Regular Civil Suit No.85 of 1988 is concerned, it is for permanent injunction only and so far as the suit for possession is concerned, the same is filed in the Rent Court, invoking the provisions of the Bombay Rent Act. It was stated that, therefore, so far as Regular Civil Suit No.85 of 1988 is concerned, it has nothing to do with the subsequently filed suit, i.e. Regular Civil Suit No.39 of 1993. It was prayed that the aforesaid application may be rejected. The learned trial court, however, passed an order below Exhibit 75 in Regular Civil Suit No.85 of 1988, by which the learned Judge dismissed the aforesaid suit of the plaintiff, being Regular Civil Suit No.85 of 1988. The aforesaid order is challenged in this revision application by the present petitioner, who is the original plaintiff of the aforesaid suit.

At the time of hearing of this Revision Application, Mr. Shah, learned Advocate for the petitioner, pointed out that so far as Regular Civil Suit No.85 of 1988 is concerned, the aforesaid suit is for injunction, wherein the prayer is that the defendants may be restrained from making any construction in the suit property. In that suit, interim injunction was already granted in his favour. So far as the rent suit is concerned, which was filed subsequently, being Regular Civil Suit No.39 of 1993, it is filed by invoking the provisions of the Bombay Rent Act for getting possession

on the ground of making alteration in the suit premises and such other grounds and, therefore, the impugned order, which is purported to have been passed by invoking the provisions of Section 41(h) of the Specific Relief Act, 1963, is, on the face of it, illegal and learned trial Judge has illegally exercised his jurisdiction while passing the impugned order. Mr. Shelat, on the other hand, has argued that when substantive suit for possession has already been filed, wherein the plaintiff has alleged the ground of permanent alterations, no prayer can be granted in the present suit, which is only a suit for injunction, especially when other equally efficacious relief can certainly be obtained

suit. At this stage, reference to Section 41(h) of the Specific Relief Act, 1963 is required to be made. Section 41(h) of the Specific Relief Act, 1960 provides as under :-

"41. Injunction when refused.-An injunction cannot be granted-

... ..

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

... .. "

It is not in dispute that so far as Regular Civil Suit No.85 of 1988 is concerned, the aforesaid suit is filed for a permanent injunction, restraining the defendants from making any permanent construction in the suit premises. It is, therefore, simpliciter suit for injunction. The aforesaid suit is filed before the regular court and the said suit is not filed invoking any of the provisions of the Bombay Rent Act. In the said suit, there was an order of injunction in favour of the plaintiff-petitioner. So far as Regular Civil Suit No.39 of 1993 is concerned, the aforesaid suit is not for injunction, but it is a suit for possession of the suit property as per the ground available under the Bombay Rent Act. It is no doubt true that in the said suit, the plaintiff has asked for possession on the ground of permanent alteration made by the defendants. Regular Civil Suit No.85 of 1988 is a previously instituted suit. The date on which the aforesaid suit was filed, the subsequent suit was not filed. It is no doubt true that

the plaintiff can amend the plaint and ask for injunction even in the subsequent suit. But, that does not mean that no relief can be given to the plaintiff in Regular Civil Suit No.85 of 1988 on the ground of Section 41(h) of the Specific Relief Act. Regular Civil Suit No.85 of 1988 is filed before a regular court exercising ordinary civil jurisdiction under the provisions of the Civil Procedure Code while the subsequent suit is filed, which is in the nature of a rent suit, which would lie before the Court exercising the powers under the Bombay Rent Act. Prima facie, therefore, it cannot be said that since there is an equally efficacious remedy available to the plaintiff, the present suit, being Regular Civil Suit No.85 of 1988, is not maintainable. In any case, the learned trial Judge has not decided the suit on merits nor such finding is given on any particular issue while deciding the suit itself. The learned trial Judge dismissed the suit on mere application given by the defendants to the effect that other efficacious remedy is available, whereunder the plaintiff can claim the relief and, therefore, the suit must be dismissed. The learned trial Judge could not have dismissed the suit merely on an application given by the defendants. Even otherwise, when the suit is taken up for final hearing, only at that stage the Court has to consider whether any injunction can be granted to the plaintiff or not and at that stage, the question under Section 41(h) can be taken into consideration, but on mere application of the defendants, the suit could not have been dismissed. The Court could not have disposed of the entire suit when the suit was not fixed for final hearing. The procedure adopted by the learned Civil Judge, therefore is contrary to law. The order of the trial court, therefore, on the face of it, is without jurisdiction. When the suit was not kept for final hearing and when the issues were already framed, the trial court could not have dismissed the suit on such application, but the proper course should have been to give finding on the issues, which were already framed in the said suit. The order of the trial court is, therefore, absolutely unsustainable and deserves to be set aside. In that view of the matter, the order passed by the Civil Judge (S.D.), Dahod dated 22nd April, 1996, dismissing the suit by passing order below Exhibit 75 in Regular Civil Suit No.85 of 1988 is quashed and set aside. The aforeaid suit is restored to the file of the learned trial Judge. The aforesaid suit, being Regular Civil Suit No.85 of 1988, should be disposed of on merits. It is clarified that it would be open for the learned trial Judge to consider all the points, including the point whether prayer for injunction can be granted or not. The order in question is set aside mainly on the

ground that no such application could have been entertained at the relevant stage by the trial court without deciding the entire suit on merits. In that view of the matter, this revision is allowed. Rule is made absolute, with no order as to costs.

30th June, 2000 (P.B. Majmudar, J.)

(apj)